

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-6647

STEPHEN CLAY JONES,

Petitioner - Appellant,

versus

DAVID CHESTER, Superintendent,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. W. Earl Britt, Senior District Judge; William A. Webb, Magistrate Judge. (CA-01-667)

Submitted: August 28, 2003

Decided: September 4, 2003

Before NIEMEYER and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Stephen Clay Jones, Appellant Pro Se. Clarence Joe DelForge, III, OFFICE OF THE ATTORNEY GENERAL OF NORTH CAROLINA, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Stephen Clay Jones, a North Carolina prisoner, seeks to appeal the district court's order accepting the report and recommendation of a magistrate judge and denying relief on his 28 U.S.C. § 2254 (2000) petition. An appeal may not be taken to this court from the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a state court unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue for claims addressed by a district court on the merits absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). As to claims dismissed by a district court solely on procedural grounds, a certificate of appealability will not issue unless the petitioner can demonstrate both "(1) 'that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right'" and (2) 'that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Rose v. Lee, 252 F.3d 676, 684 (4th Cir. 2001) (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). We have independently reviewed the record and conclude that Jones has not made the requisite showing. See Miller-El v. Cockrell, 537 U.S. 322, ___, 123 S. Ct. 1029, 1039 (2003). Accordingly, we deny a certificate of appealability and dismiss the appeal. See 28 U.S.C. § 2253(c)

(2000). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED